

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

STATESBORO DIVISION

KENNETH TRUMANE JONES,)	
)	
Plaintiff,)	
)	
v.)	CV 621-018
)	
WARDEN TREVONZA BOBBITT, Georgia)	
State Prison,)	
)	
Defendant.)	

ORDER

Plaintiff, incarcerated at Georgia State Prison (“GSP”) in Reidsville, Georgia, is proceeding *pro se* and *in forma pauperis* (“IFP”) in this case brought pursuant to 42 U.S.C. § 1983. Because he is proceeding IFP, Plaintiff’s complaint must be screened to protect potential defendants. Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984); Al-Amin v. Donald, 165 F. App’x 733, 736 (11th Cir. 2006) (*per curiam*).

I. SCREENING OF THE COMPLAINT

A. BACKGROUND

Plaintiff names Warden Trevonza Bobbitt as the sole Defendant. (Doc. no. 1, p. 1, 4.) Taking all of Plaintiff’s allegations as true, as the Court must for purposes of the present screening, the facts are as follows.

On November 6, 2020, while in dorm B-2, Plaintiff went to the water fountain for a drink of water and stopped to talk to a few friends sitting at a nearby table. (Id. at 5.) While talking, Plaintiff became dizzy and decided to return to his cell. (Id.) On the way to his cell, an

unidentified inmate ambushed Plaintiff and stabbed and beat him in the face, causing Plaintiff serious bodily harm. (Id.) Plaintiff received stitches above his eye and the left side of his face. Plaintiff received no pain relief medication after the stabbing, and he claims officials left him “in shipping and receiving room for 12 days with no pain relief meds” (Id. at 6.) Plaintiff asserts GSP needs to provide better security to prevent future attacks. (Id. at 5.) There are knives “everywhere” and prison staff are not “shaking down properly to find them.” (Id.) As a result of the November 6th attack, Plaintiff lost a lot of blood, is still experiencing pain, and suffers from nightmares, sweats, and flashbacks. (Id. at 6.) Additionally, Plaintiff lost his future wife, a record label, business deal, a book publishing contract, and paperwork. (Id.) Plaintiff needs plastic surgery and can no longer see his kids because they fear him. (Id.)

For relief, Plaintiff requests compensatory and punitive damages. (Id. at 6.)

B. DISCUSSION

1. Legal Standard for Screening

The complaint or any portion thereof may be dismissed if it is frivolous, malicious, or fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune to such relief. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). A claim is frivolous if it “lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). “Failure to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard as dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6).” Wilkerson v. H & S, Inc., 366 F. App’x 49, 51 (11th Cir. 2010) (citing Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)).

To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations in the complaint must “state a claim to relief that is plausible on its face.” Bell Atl.

Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). That is, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. While Rule 8(a) of the Federal Rules of Civil Procedure does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A complaint is insufficient if it “offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action,’” or if it “tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” Id. (quoting Twombly, 550 U.S. at 555, 557). In short, the complaint must provide a “‘plain statement’ possess[ing] enough heft to ‘sho[w] that the pleader is entitled to relief.’” Twombly, 550 U.S. at 557 (quoting Fed. R. Civ. P. 8(a)(2)).

Finally, the Court affords a liberal construction to a *pro se* litigant’s pleadings, holding them to a more lenient standard than those drafted by an attorney. Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404 U.S. 519, 520 (1972). However, this liberal construction does not mean that the Court has a duty to re-write the complaint. Snow v. DirecTV, Inc., 450 F.3d 1314, 1320 (11th Cir. 2006).

2. Plaintiff Fails to State a Claim Against Warden Bobbitt

The Eleventh Circuit has held a district court properly dismisses a defendant where a prisoner, other than naming the defendant in the caption of the complaint, fails to state any allegations that associate the defendant with the purported constitutional violation. Douglas v. Yates, 535 F.3d 1316, 1321-22 (11th Cir. 2008) (“While we do not require technical niceties in pleading, we must demand that the complaint state with some minimal

particularity how overt acts of the defendant caused a legal wrong.”). While Plaintiff names Warden Bobbitt as a Defendant, Plaintiff alleges no facts regarding Warden Bobbitt in his statement of claim and does not connect him to the assault alleged to have occurred.

Plaintiff essentially seeks to hold Warden Bobbitt liable merely in light of his supervisory position. However, “[s]upervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of *respondeat superior* or vicarious liability.” Hartley v. Parnell, 193 F.3d 1263, 1269 (11th Cir. 1999) (internal quotation marks and citation omitted); see also Rosa v. Fla. Dep’t of Corr., 522 F. App’x 710, 714 (11th Cir. 2013). Likewise, supervisors and employers cannot be sued under § 1983 simply on a theory of *respondeat superior*. See Kruger v. Jenne, 164 F. Supp.2d 1330, 1333-34 (S.D. Fla. 2000) (citing Powell v. Shopco Laurel, Co., 678 F.2d 504 (4th Cir. 1982)) (explaining that employer which provided medical care for state inmates could not be sued under § 1983 on *respondeat superior* theory).

“Because vicarious liability is inapplicable to § 1983 actions, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” Rosa, 522 F. App’x at 714 (quoting Iqbal, 556 U.S. at 676) (internal quotations omitted). Therefore, to hold Warden Bobbitt liable, Plaintiff must demonstrate he (1) actually participated in the alleged constitutional violation, or (2) there is a causal connection between the individual’s actions and the alleged constitutional violation. See Hartley, 193 F.3d at 1269 (citing Brown v. Crawford, 906 F.2d 667, 671 (11th Cir. 1990)). Here, Plaintiff seeks to hold Warden Bobbitt liable not because of his direct involvement in the events about which he complains, but by virtue of his supervisory position at GSP. Thus, nowhere does Plaintiff allege Warden Bobbitt was present for, or participated in, the November 6th stabbing.

Therefore, Plaintiff must allege a causal connection between Warden Bobbitt and the asserted constitutional violations. See Zatler v. Wainwright, 802 F.2d 397, 401 (11th Cir. 1986) (requiring an affirmative causal connection between a defendant and an alleged constitutional violation). The “causal connection” can be established “when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so,” Brown, 906 F.2d at 671, or when “the supervisor’s improper ‘custom or policy . . . result[s] in deliberate indifference to constitutional rights.’” Hartley, 193 F.3d at 1269 (quoting Rivas v. Freeman, 940 F.2d 1491, 1495 (11th Cir. 1991)). The standard for demonstrating “widespread abuse” is high. In the Eleventh Circuit, “deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant and of continued duration, rather than isolated occurrences.” Brown, 906 F.2d at 671. A causal connection may also be shown when the facts support “an inference that the supervisor [or employer] directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so.” Cottone v. Jenne, 326 F.3d 1352, 1360 (11th Cir. 2003).

Plaintiff fails to allege facts sufficient to support the necessary causal connection. Plaintiff has not alleged (1) a history of widespread abuse regarding inmate on inmate violence at GSP, (2) an improper custom or policy put in place by Warden Bobbitt regarding the same, or (3) an inference Warden Bobbitt directed others to act, or knew they would act, unlawfully. In sum, Plaintiff has not shown Warden Bobbitt actually participated in the alleged constitutional violation; nor has he drawn the necessary causal connection to any alleged constitutional violation. Therefore, Plaintiff fails to state a claim upon which relief can be granted against Warden Bobbitt.

3. Plaintiff Fails to State a Claim for Excessive Violence

A prisoner has a constitutional right to be protected from violence and physical assault by other inmates. Harmon v. Berry, 728 F.2d 1407, 1409 (11th Cir. 1984) (*per curiam*). However, because “a risk of harm to some degree always exists by the nature of it[] being a [prison],” not every condition rises to the level of an Eighth Amendment violation. Purcell ex rel. Estate of Morgan v. Toombs Cty., Ga., 400 F.3d 1313, 1323 (11th Cir. 2005); see also Gullatte v. Potts, 654 F.2d 1007, 1012 (5th Cir. Unit B Aug. 1981) (“This does not mean that the constitutional rights of inmates are violated every time a prisoner is injured. It would not be reasonable to impose such an absolute and clearly unworkable responsibility on prison officials.”); Terry v. Bailey, 376 F. App’x 894, 895 (11th Cir. 2010) (*per curiam*) (“Although ‘prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners,’ not every instance of inmate on inmate violence ‘translates into constitutional liability for prison officials responsible for the victim’s safety.’”). “An excessive risk of inmate-on-inmate violence at a jail creates a substantial risk of serious harm; occasional, isolated attacks by one prisoner on another may not constitute cruel and unusual punishment, [but] confinement in a prison where violence and terror reign is actionable.” Harrison v. Culliver, 746 F.3d 1288, 1299 (11th Cir. 2014).

“Merely negligent failure to protect an inmate from attack does not justify liability under § 1983.” Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990) (*per curiam*) (citation omitted). Stated otherwise, Eighth Amendment liability cannot be based on simple negligence or lack of due care, but rather requires some sort of conscious disregard of a serious and imminent risk. Farmer, 511 U.S. at 835-39; see also Adams v. Poag, 61 F.3d 1537, 1543 (11th Cir. 1995) (requiring plaintiff to show “more than mere negligence,” and

stating courts are to look for “obduracy and wantonness, not inadvertence or error in good faith.”).

In particular, a prisoner seeking to impose liability for an Eighth Amendment claim must establish the existence of “(1) a substantial risk of serious harm; (2) the defendants’ deliberate indifference to that risk; and (3) causation.” Lane v. Philbin, 835 F.3d 1302, 1307 (11th Cir. 2016) (internal quotations omitted). These three elements are evaluated in part by an objective standard and in part by a subjective standard. See Caldwell v. Warden, FCI Talladega, 748 F.3d 1090, 1099 (11th Cir. 2014).

As the Eleventh Circuit explained,

When examining the first element—a substantial risk of serious harm—the court uses an objective standard. The second element—the defendant’s deliberate indifference to that risk—has two components: one subjective and one objective. To satisfy the subjective component, a plaintiff must produce evidence that the defendant actually (subjectively) kn[ew] that an inmate [faced] a substantial risk of serious harm. To satisfy the objective component, a plaintiff must produce evidence that the defendant disregard[ed] that known risk by failing to respond to it in an (objectively) reasonable manner.

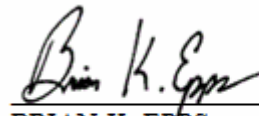
Id. (internal citations and quotations omitted). The deliberate indifference prong of the test requires proof of “(1) subjective knowledge of a risk of serious harm; and (2) disregard of that risk (3) by conduct that is more than mere negligence.” Dang ex rel. Dang v. Sheriff, Seminole Cty., Fla., 871 F.3d 1272, 1279 (11th Cir. 2017) (citation omitted). In addition, “[a] prison official cannot be found liable under the Eighth Amendment . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Lane, 835 F.3d at 1308 (quoting Farmer, 511 U.S. at 837)).

Plaintiff has failed to allege a substantial risk of serious harm based on generalized conditions of dangerousness. While Plaintiff alleges the prison could benefit from better security measures and knives are “everywhere,” Plaintiff provides no details to support these generalized assertions. (Doc. no. 1, p. 5.) Plaintiff’s allegations are too vague and conclusory to infer that violence and terror are pervasive rather than commensurate of that seen in any other prison. Moreover, Plaintiff does not assert Warden Bobbitt knew of and disregarded an excessive risk to his health or safety. Accordingly, the complaint provides no basis for relief on Plaintiff’s Eighth Amendment claim.

II. CONCLUSION

For the reasons set forth above, the Court **DISMISSES** Plaintiff’s complaint for failure to state a claim upon which relief can be granted and **CLOSES** this civil action.

SO ORDERED this 20th day of April, 2021, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA